

RECEIVED  
JAN 10 2011

BY: .....

TERRY GODDARD  
Attorney General  
(Firm State Bar No. 14000)

ELIZABETH A. CAMPBELL  
Assistant Attorney General  
State Bar No. 018311  
1275 W. Washington, CIV/LES  
Phoenix, Arizona 85007-2997  
Tel: (602) 542-7681  
Fax: (602) 364-3202

Attorneys for the Arizona State Board of Pharmacy

**BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

In the Matter of

**DAVID RUGOLO,**

Holder of License No. S009731  
As a Pharmacist  
In the State of Arizona

Board Case No. 11-0028-PHR

**CONSENT AGREEMENT  
FOR CIVIL PENALTY AND  
CONTINUING EDUCATION**

In the interest of a prompt and judicious settlement of this case, consistent with the public interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, David Rugolo ("Respondent"), holder of Pharmacist License Number S009731 in the State of Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final disposition of this matter.

**RECITALS**

1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.

1           2.     Respondent understands that he has a right to a public administrative  
2 hearing concerning this matter at which hearing he could present evidence and cross  
3 examine witnesses. By entering into this Consent Agreement, Respondent knowingly  
4 and voluntarily relinquishes all right to such an administrative hearing, as well as rights  
5 of rehearing, review, reconsideration, appeal, judicial review or any other administrative  
6 and/or judicial action, concerning the matters set forth herein.

7           3.     Respondent affirmatively agrees that this Consent Agreement shall be  
8 irrevocable.

9           4.     Respondent understands that this Consent Agreement or any part of the  
10 agreement may be considered in any future disciplinary action by the Board against him.

11          5.     Respondent understands this Consent Agreement deals with Board  
12 Complaint No. 3869 involving allegations of unprofessional conduct against Respondent.  
13 The investigation into these allegations against Respondent shall be concluded upon the  
14 Board's adoption of this Consent Agreement.

15          6.     Respondent understands that this Consent Agreement does not constitute a  
16 dismissal or resolution of any other matters currently pending before the Board, if any,  
17 and does not constitute any waiver, express or implied, of the Board's statutory authority  
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19          7.     Respondent also understands that acceptance of this Consent Agreement  
20 does not preclude any other agency, subdivision, or officer of this State from instituting  
21 any other civil or criminal proceedings with respect to the conduct that is the subject of  
22 this Consent Agreement.

23          8.     Respondent acknowledges and agrees that, upon signing this Consent  
24 Agreement and returning this document to the Board's Executive Director, he may not  
25 revoke his acceptance of the Consent Agreement or make any modifications to the  
26

1 document regardless of whether the Consent Agreement has been signed by the  
2 Executive Director. Any modification to this original document is ineffective and void  
3 unless mutually agreed by the parties in writing.

4 9. This Consent Agreement is subject to the approval of the Board and is  
5 effective only when accepted by the Board and signed by the Executive Director. In the  
6 event that the Board does not approve this Consent Agreement, it is withdrawn and shall  
7 be of no evidentiary value and shall not be relied upon nor introduced in any action by  
8 any party, except that the parties agree that should the Board reject this Consent  
9 Agreement and this case proceeds to hearing, Respondent shall assert no claim that the  
10 Board was prejudiced by its review and discussion of this document or any records  
11 relating thereto.

12 10. If a court of competent jurisdiction rules that any part of this Consent  
13 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
14 shall remain in full force and effect.

15 11. Respondent understands that this Consent Agreement is a public record that  
16 may be publicly disseminated as a formal action of the Board and may be reported as  
17 required by law to the National Practitioner Data Bank and the Healthcare Integrity and  
18 Protection Data Bank.

19 12. Respondent understands that any violation of this Consent Agreement  
20 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-  
21 1901.01(B)(20), -1927(A)(1).

22 13. Respondent agrees that the Board will adopt the following Findings of Fact,  
23 Conclusions of Law and Order.

24 ...

25 ...

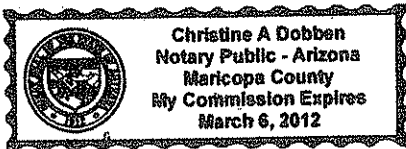
26 ...

1 ACCEPTED AND AGREED BY RESPONDENT

2 David Rugolo  
3 David Rugolo

Dated: Jan 7, 2011

4 Subscribed and sworn to before me in the County of Maricopa, State of Arizona,  
5 this 7<sup>th</sup> day of January, 2011, by David Rugolo.



7 Christine A. Dobben  
8 NOTARY PUBLIC

My Commission expires: March 6, 2012

9 **FINDINGS OF FACT**

10 1. The Board is the duly constituted authority for licensing and regulating the  
11 practice of pharmacy in the State of Arizona.

12 2. Respondent is the holder of license number S009731 to practice as a  
13 pharmacist in the State of Arizona.

14 3. During all relevant times to these findings, Respondent worked as the  
15 pharmacist in charge at Walgreens Drug #6692 (the "Pharmacy") in Gilbert, Arizona.

16 4. In September 2010, the Board received a complaint that the Pharmacy had  
17 filled a prescription for the wrong medication. Upon investigation of the complaint by  
18 the Board compliance officer, it was determined that no documentation of counseling for  
19 the prescription was located on the patient counseling log for the date the misfilled  
20 prescription had been picked up.

21 **CONCLUSIONS OF LAW**

22 1. The Board possesses jurisdiction over the subject matter and over  
23 Respondent pursuant to A.R.S. § 32-1901 *et seq.*  
24  
25  
26

2. The Board may discipline a pharmacist who has engaged in unprofessional conduct. A.R.S. § 32-1927(A)(1).

3. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(2) (Violating any federal or state law, rule or regulation relating to the manufacture or distribution of drugs and devices or the practice of pharmacy).

4. As pharmacist-in-charge, Respondent was charged with ensuring that pharmacists, interns, and technicians in the Pharmacy complied with Board directives. Arizona Administrative Code R4-23-610(A).

5. The conduct described above violated Arizona Administrative Code R4-23-402(G) (Using a method approved by the Board or its designee, a pharmacist, graduate intern, or pharmacy intern shall document, or assume responsibility to document, that oral consultation is or is not provided).

## ORDER

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT Respondent shall:

1. Pay a civil penalty of \$1,000.00 within **90 days** of the effective date of this Order; and

2. Successfully complete and provide proof of successful completion to the Board of six (6) contact hours (0.6 C.E.U.) of American Council on Pharmaceutical Education course(s) on the topic of pharmacy law. The required course(s) must be completed within **90 days** of the effective date of this Order, must be pre-approved by Board staff, and shall be in addition to the requirements of A.R.S. § 32-1936 and A.A.C. R4-23-204.

3. Respondent shall pay all costs associated with complying with this Consent Agreement.

4. If Respondent violates this Order in any way or fails to fulfill the requirements of this Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke, suspend or take other disciplinary actions against Respondent's license. The issue at such a hearing will be limited solely to whether this Order has been violated.

DATED this 28 day of February, 2011

ARIZONA STATE BOARD OF PHARMACY

(Seal)

By:

HAL WAND, R.Ph.  
Executive Director

1 ORIGINAL OF THE FORGOING FILED

2 this 28 day of JAN, 2011

TNP

3 Arizona State Board of Pharmac,  
4 1700 West Washington, Suite 250  
5 Phoenix, Arizona 85007

6 EXECUTED COPY OF THE FOREGOING MAILED  
7 BY CERTIFIED MAIL.

8 this 28 day of JAN, 2011

TNP

9 David Rugolo  
10 1576 E. Robinson Way  
11 Chandler, Arizona 85225  
12 Respondent

13 EXECUTED COPY OF THE FOREGOING MAILED

14 this 28 day of JAN, 2011

TNP

15 Elizabeth A. Campbell  
16 Assistant Attorney General  
17 1275 W. Washington Street, CIV/LES  
18 Phoenix, Arizona 85007  
19 Attorney for the Board

20 TNP

21 #1408362